

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NETCHOICE, LLC, d/b/a NETCHOICE, a
501(c)(6) District of Columbia organization;
and COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION d/b/a CCIA, a
501(c)(6) non-stock Virginia corporation,

Plaintiffs,

v.

KEN PAXTON, in his official capacity as
Attorney General of Texas,

Defendant.

Civ. Action No. 1:21-cv-00840

**DECLARATION OF LGBT TECHNOLOGY INSTITUTE IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Carlos Gutierrez, declare as follows:

1. I am Deputy Director and General Counsel of LGBT Technology Institute (LGBT Tech), a 501(c)(3) nonprofit organization incorporated in West Virginia and headquartered in Staunton, VA.

2. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

3. LGBT Tech is a national, nonpartisan group of LGBT organizations, academics, and high technology companies. First, we engage with critical technology and public policy leaders about media, technology, and telecommunications issues of specific concern to LGBTQ communities. And second, we work to bridge the technology gap for all LGBTQ individuals.

4. We also engage in research, education, volunteerism, and partnerships to provide cutting-edge technology and resources to improve the lives of LGBTQ individuals, especially those who are disadvantaged.

5. At bottom, our efforts ensure that the LGBTQ community's specific concerns are part of the conversation. Because of the unique stigmas society often inflicts on those identifying as LGBTQ, and because too many LGBTQ individuals still face isolation, these concerns are often overlooked or overpowered. But technology—smart phones, social media, high-speed networks—help connect LGBTQ individuals, allowing them to form connections, to meet, and to find support. Thanks to technology, LGBTQ individuals can form inclusive, supportive communities that transcend geography. To cite a few examples of technology's importance to LGBTQ communities and individuals:

- For the LGBTQ community, the internet has always been a vital tool to access education, employment opportunities and health care. High numbers of LGBT youth use the internet to search for health information and a majority of LGBTQ individuals use the internet to connect with other members of their community via social networking.
- LGBTQ youths are no longer confined to growing up in a world where they feel alone; thanks to the internet, social media, messaging services, and smartphones, they can connect no matter their culture or background;
- LGBTQ individuals—and those struggling with their sexual orientation or gender identity—have access to information and support that is not always available in-person, especially in smaller or remote communities; and

- Exposure to LGBTQ individuals and LGBTQ-related content, especially on social media, has helped society accept LGBTQ individuals and better understand our concerns.

6. Despite all these benefits, however, technology poses unique risks to LGBTQ communities. Consider just a few ways:

- Without adequate privacy controls, technology, including social media accounts, can be used to “out”—or even harass, threaten, or blackmail—an LGBTQ teenager; and
- Without adequate content moderation policies, digital forums and apps can become breeding grounds for homophobia, bullying (cyber and otherwise), harassment, and misinformation.

7. It is the latter example—unsafe and toxic internet forums and social media platforms—that we wish to address in this Declaration. If Texas’s new social media law, known as House Bill 20, takes effect, covered platforms like Snap (owner of Snapchat), Amazon, Facebook, TikTok, YouTube, Twitter, Reddit, and even LinkedIn will be prohibited from “censoring” content based on either (a) the user’s “viewpoint” or (b) the content’s “viewpoint.” We are greatly concerned that this law will make the internet, including the very services and platforms LGBTQ individuals use daily, unsafe to such an extent that LGBTQ communities will lose access to valuable—indeed, sometimes life-saving—information and services.

8. While the law’s supporters claim it is meant to protect free speech, including “hate speech,” it will inflict unique harms on LGBTQ communities and individuals who rely on technology platforms’ content moderation systems to remove the worst of the worst. In particular, the proliferation of such content will make it harder for marginalized groups like LGBTQ

individuals to participate and communicate freely on the internet or to do so without being harassed. It also risks fomenting homophobic and hateful stereotypes and myths in society more broadly.

9. And it could have serious consequences. Consider conversion therapy. Despite conclusive scientific and medical research proving it is dangerous to an LGBTQ individual's emotional, spiritual, mental, and physical wellbeing, too many organizations and individuals continue to peddle it as a miracle "cure all." Under this law, conversion therapists could promote and market their harmful services without any pushback; anti-LGBTQ groups and individuals could flood spaces intended to be safe havens for LGBTQ individuals with misinformation about conversion therapy's "success" rate; and non-LGBTQ individuals, including parents of a teen struggling with their sexuality, would get a false sense of conversion therapy's alleged benefits. But under HB 20, platforms would have to leave this content up because it reflects a "viewpoint"—a dangerous one.

10. Consider also "hate speech." While the law's sponsors and supporters spoke specifically about protecting conservative speech, the law goes far beyond protecting political speech. It protects, promotes, and prioritizes hateful content that is neither liberal nor conservative, just hateful. Here are real-life examples of content that is currently removed or restricted but that platforms would be compelled to host should the law take effect:

- Anti-trans content that insists transgender individuals are mentally ill;
- Homophobic content that recycles old stereotypes of gay men being social deviants who deserve to contract HIV, and professional LGBTQ individuals like teachers being inherently predatory toward children; and

- Harassing and bullying content that uses words like “faggot” and that uses LGBTQ culture and sexual orientation as verbal weapons to degrade others, be they heteronormative or LGBTQ.

11. To be sure, creating safe, inclusive online communities for LGBTQ users is no easy feat. Even without HB 20 in effect, platforms and civil society face growing challenges. According to GLADD’s Social Media Safety Index, published earlier this year and citing Pew Research survey results from January, an astounding 68% of LGBTQ *adults* have encountered online hate and harassment, and 51% have been targeted for “more severe forms of online abuse.”¹ By comparison, roughly 41% of straight adults reported enduring *any* form of online harassment.²

12. These survey results confirm what LGBT Tech knows firsthand: content moderation is essential to reducing online hate and harassment. But under HB 20, a user’s hateful or harassing “viewpoint” is protected and prioritized over protecting users and prioritizing inclusivity. The law leaves little wiggle room: Should the platforms remove hateful content, they may be sued. The practical effect of that liability threat accords with common sense: like any business in any industry, an online platform will seek to minimize its risks and mitigate its liability. To do that in Texas, however, will mean sacrificing the internet’s growing acceptance of and support for LGBTQ individuals everywhere, not just in Texas, and rolling back the clock on social progress.

13. While social media platforms are not without their problems, they offer LGBTQ individuals and communities unprecedented opportunities to connect safely and participate in a society that is still not available to them on fully equal terms. Rather than promoting civil discourse

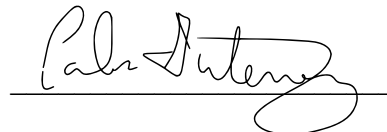
¹ See p. 9 https://www.glaad.org/sites/default/files/images/2021-05/GLAAD%20SOCIAL%20MEDIA%20SAFETY%20INDEX_0.pdf

² *Id.*

and mutual understanding between different groups, HB 20 threatens to sabotage online speech and drive reasonable users from the marketplace of ideas. Put simply, few users—gay, straight, trans; white, black, brown; young or old—want to scroll through hateful content and messages. But because HB 20 compels platforms to host such content, and because bad actors tend to spam message boards, private group pages, and other forums with hateful messages, many users will flee these platforms. At the very least, many will engage less.

14. More broadly, we, along with other LGBTQ groups across the spectrum, encourage businesses and corporations to take inclusivity seriously and to keep LGBTQ individuals in mind as they craft policies and implement practices. Since content moderation policies often reflect a company's values, we have been encouraged to see platforms adopt explicit anti-hate-speech policies that protect LGBTQ individuals' access to their services. To be sure, there is still work to be done and as technology evolves, new challenges will arise. But if a State like Texas can force a private company to abandon its values and to host all viewpoints, then State lawmakers and *their* viewpoints and values will come to define the internet. Aside from the obvious dangers of state-run media, such a power dynamic would mean that marginalized communities are once again shut out of the conversation and once again left to the whims of the political process—which, as history has shown, is rarely on our side.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing to be true and correct to the best of my knowledge. Executed on this 27th day of September in Silver Spring, MD.

A handwritten signature in black ink, appearing to read "Carlos Gutierrez", written over a horizontal line.

Carlos Gutierrez